

HOUSE BILL 750

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; AMENDING POWERS AND DUTIES OF THE RISK
MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT;
AMENDING THE TORT CLAIMS ACT TO INCLUDE FOSTER CARE AND
TREATMENT FOSTER CARE PARENTS AS PUBLIC EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978,
Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK
MANAGEMENT DIVISION.--

A. The risk management division of the general
services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or employee
group benefits; provided that any proposal or contract for the

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1 procurement of any group health care benefits shall be subject
2 to the provisions of the Health Care Purchasing Act; and
3 provided further that reinsurance or excess coverage insurance
4 may be placed by private negotiation, notwithstanding the
5 provisions of the Procurement Code, if the insurance or
6 reinsurance has a restricted number of interested carriers, the
7 board determines that the coverage is in the interest of the
8 state and cannot otherwise be procured for a reasonable cost
9 and the director seeks the advice and review of the board in
10 the placement and in designing private negotiation procedures;

11 (3) in the manner prescribed by Subsection E
12 of Section 9-17-5 NMSA 1978, after a notice and a public
13 hearing, prescribe by regulation reasonable and objective
14 underwriting and safety standards for governmental entities and
15 reasonable standards for municipal self-insurance pooling
16 agreements covering liability under the Tort Claims Act and
17 adopt such other regulations as may be deemed necessary;

18 (4) compromise, adjust, settle and pay claims;

19 (5) pay expenses and costs;

20 (6) in the manner prescribed by Subsection E
21 of Section 9-17-5 NMSA 1978, prescribe by rule or regulation
22 the rating bases, assessments, penalties and risks to be
23 covered by the public liability fund, the workers' compensation
24 retention fund and the public property reserve fund and the
25 extent such risks are to be covered;

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1 (7) issue certificates of coverage in
2 accordance with Paragraph (6) of this subsection:

3 (a) to any governmental entity for any
4 tort liability risk covered by the public liability fund;

5 (b) to any governmental entity for any
6 personal injury liability risk or for the defense of any errors
7 or act or omission or neglect or breach of duty, including the
8 risks set forth in Paragraph (2) of Subsection B and Paragraph
9 (2) of Subsection D of Section 41-4-4 NMSA 1978; and

10 (c) to any governmental entity for any
11 part of risk covered by the workers' compensation retention
12 fund, the surety bond fund or the public property reserve fund;

13 (8) study the risks of all governmental
14 entities;

15 (9) initiate the establishment of safety
16 programs and adopt regulations to carry out such programs in
17 the manner prescribed by Subsection E of Section 9-17-5 NMSA
18 1978;

19 (10) hire a safety program director who shall
20 coordinate all safety programs of all state agencies;

21 (11) consult with and advise local public
22 bodies on their risk management problems; and

23 (12) employ full-time legal counsel who shall
24 be under the exclusive control and supervision of the director
25 and the secretary of general services.

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1 B. The risk management division of the general
2 services department shall provide liability coverage for the
3 following risks:

4 (1) a claim made pursuant to the provisions of
5 42 U.S.C. Section 1983 against a nonprofit corporation, members
6 of its board of directors or its employees when the claim is
7 based upon action taken pursuant to the provisions of a
8 contract between the corporation and the department of health
9 under which the corporation provides developmental disability
10 services to clients of the department and the claim is made by
11 or on behalf of a client; ~~and~~

12 (2) a claim made pursuant to the provisions of
13 42 U.S.C. Section 1983 against a nonprofit corporation, members
14 of its board of directors or its employees when the corporation
15 operates a facility licensed by the department of health as an
16 intermediate care facility for the mentally retarded and the
17 claim is based upon action taken pursuant to the provisions of
18 the license and is made by or on behalf of a resident of the
19 licensed facility; and

20 (3) a claim made pursuant to the provisions of
21 42 U.S.C. Section 1983 against a nonprofit corporation, members
22 of its board of directors, its employees, its licensed
23 treatment foster care parents or licensed foster care parents
24 and the claim is based upon action taken pursuant to the
25 provisions of a contract between the corporation and the

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1 department of health or the children, youth and families
2 department pursuant to which the corporation provides treatment
3 foster care services or foster care services to children in the
4 state's custody.

5 C. The director shall report [~~his~~] findings and
6 recommendations, if any, for the consideration of each
7 legislature. The report shall include the amount and name of
8 any person receiving payment from the public liability fund of
9 any claim paid during the previous fiscal year exceeding one
10 thousand dollars (\$1,000). The report shall be made available
11 to the legislature on or before December 15 preceding each
12 regular legislative session."

13 Section 2. Section 41-4-1 NMSA 1978 (being Laws 1976,
14 Chapter 58, Section 1, as amended) is amended to read:

15 "41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~
16 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
17 Claims Act"."

18 Section 3. Section 41-4-3 NMSA 1978 (being Laws 1976,
19 Chapter 58, Section 3, as amended) is amended to read:

20 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

21 A. "board" means the risk management advisory
22 board;

23 B. "governmental entity" means the state or any
24 local public body as defined in Subsections C and H of this
25 section;

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1 C. "local public body" means all political
2 subdivisions of the state and their agencies, instrumentalities
3 and institutions and all water and natural gas associations
4 organized pursuant to Chapter 3, Article 28 NMSA 1978;

5 D. "law enforcement officer" means a full-time
6 salaried public employee of a governmental entity whose
7 principal duties under law are to hold in custody any person
8 accused of a criminal offense, to maintain public order or to
9 make arrests for crimes, or members of the national guard when
10 called to active duty by the governor;

11 E. "maintenance" does not include:

12 (1) conduct involved in the issuance of a
13 permit, driver's license or other official authorization to use
14 the roads or highways of the state in a particular manner; or

15 (2) an activity or event relating to a public
16 building or public housing project that was not foreseeable;

17 F. "public employee" means an officer, employee or
18 servant of a governmental entity, excluding independent
19 contractors except for individuals defined in Paragraphs (4),
20 (7), (8), (10) and (14) of this subsection, or of a corporation
21 organized pursuant to the Educational Assistance Act, the Small
22 Business Investment Act or the Mortgage Finance Authority Act
23 or a licensed health care provider, who has no medical
24 liability insurance, providing voluntary services as defined in
25 Paragraph (16) of this subsection and including:

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- 1 (1) elected or appointed officials;
- 2 (2) law enforcement officers;
- 3 (3) persons acting on behalf or in service of
- 4 a governmental entity in any official capacity, whether with or
- 5 without compensation;
- 6 (4) licensed foster parents providing care for
- 7 children in the custody of the human services department,
- 8 corrections department or department of health; ~~[but not~~
- 9 ~~including foster parents certified by a licensed child~~
- 10 ~~placement agency]~~
- 11 (5) members of state or local selection panels
- 12 established pursuant to the Adult Community Corrections Act;
- 13 (6) members of state or local selection panels
- 14 established pursuant to the Juvenile Community Corrections Act;
- 15 (7) licensed medical, psychological or dental
- 16 arts practitioners providing services to the corrections
- 17 department pursuant to contract;
- 18 (8) members of the board of directors of the
- 19 New Mexico medical insurance pool;
- 20 (9) individuals who are members of medical
- 21 review boards, committees or panels established by the
- 22 educational retirement board or the retirement board of the
- 23 public employees retirement association;
- 24 (10) licensed medical, psychological or dental
- 25 arts practitioners and licensed foster parents and treatment

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1 foster parents providing services to the children, youth and
2 families department pursuant to contract;

3 (11) members of the board of directors of the
4 New Mexico educational assistance foundation;

5 (12) members of the board of directors of the
6 New Mexico student loan guarantee corporation;

7 (13) members of the New Mexico mortgage
8 finance authority;

9 (14) volunteers, employees and board members
10 of court-appointed special advocate programs;

11 (15) members of the board of directors of the
12 small business investment corporation; and

13 (16) health care providers licensed in New
14 Mexico who render voluntary health care services without
15 compensation in accordance with rules promulgated by the
16 secretary of health. The rules shall include requirements for
17 the types of locations at which the services are rendered, the
18 allowed scope of practice and measures to ensure quality of
19 care;

20 G. "scope of duty" means performing any duties that
21 a public employee is requested, required or authorized to
22 perform by the governmental entity, regardless of the time and
23 place of performance; and

24 H. "state" or "state agency" means the state of New
25 Mexico or any of its branches, agencies, departments, boards,

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1 instrumentality or institutions."

2 Section 4. Section 41-4-9 NMSA 1978 (being Laws 1976,
3 Chapter 58, Section 9, as amended) is amended to read:

4 "41-4-9. LIABILITY--MEDICAL FACILITIES.--The immunity
5 granted pursuant to Subsection A of Section [~~5-14-4 NMSA 1953~~]
6 41-4-4 NMSA 1978 does not apply to liability for damages
7 resulting from bodily injury, wrongful death or property damage
8 caused by the negligence of public employees while acting
9 within the scope of their duties in the operation of any
10 hospital, infirmary, mental institution, clinic, dispensary,
11 medical care home, treatment foster care home or like
12 facilities."

13 Section 5. Section 41-4-10 NMSA 1978 (being Laws 1976,
14 Chapter 58, Section 10, as amended) is amended to read:

15 "41-4-10. LIABILITY--HEALTH CARE PROVIDERS.--The immunity
16 granted pursuant to Subsection A of Section [~~5-14-4 NMSA 1953~~]
17 41-4-4 NMSA 1978 does not apply to liability for damages
18 resulting from bodily injury, wrongful death or property damage
19 caused by the negligence of public employees licensed by the
20 state or permitted by law to provide health care services,
21 including treatment foster care, while acting within the scope
22 of their duties of providing health care services."